

PT 02-41

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

FIRST OPEN BIBLE CHURCH,

APPLICANT

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

00-PT-0025 (Springfield)

Real Estate Tax Exemption

**For 1999 Tax Year
P.I.N. 11-22-351-002**

Whiteside County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

SYNOPSIS:

This proceeding raises the issue of whether a residence located on the subject property, identified by Whiteside County Parcel Index Number 11-22-351-002 (hereinafter the “subject property”) qualifies for exemption from tax year 1999 real estate taxes under 35 ILCS 200/15-40, which exempts, “[a]ll property used exclusively for religious purposes.”

The controversy arises as follows: On December 21, 1999, First Open Bible Church (hereinafter “First Open” or “applicant”), owner of the subject property, filed an

Application for Property Tax Exemption with the Board of Review/Appeals of Whiteside County (hereinafter the “Board”). The Board reviewed the applicant’s complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that a partial year exemption be granted for the subject property. Dept. Ex. No. 1.

On March 9, 2000, the Department rejected the Board’s recommendation finding that the subject property was not in exempt use in tax year 1999. Dept. Ex. No. 2. On March 13, 2000, the applicant filed a timely request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on April 22, 2002, with Velva Kurfiss, church secretary, testifying. Following submission of all evidence and a careful review of the record, it is recommended that the subject property be granted a partial year exemption for the 1999 tax year.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 and 2 establish the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use in tax year 1999.
2. First Open acquired the subject property by warranty deed on October 15, 1999. App. Ex. No. 1.
3. The applicant purchased the subject property to provide a residence for Pastor Funderberg and his wife.
4. The subject property was purchased in order to replace a former parsonage, which was sold.
5. The subject property is next door to First Open. App. Ex. No. 2.

6. Sunday school classes and Wednesday night youth activities are held in the residence on the subject property.

CONCLUSIONS OF LAW:

An examination of the record establishes that First Open has demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property for 21% of the 1999 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* The provisions of that statute which govern the disposition of the instant proceeding are found in Section 200/15-40, which states as follows:

All property used exclusively for religious purposes, or used exclusively for schools and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents, and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents, and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

The above statute allows an exemption for property used exclusively for religious purposes. Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill.App.3d 325, 329 (2d Dist. 1987). Property satisfies the exclusive-use requirement of the property tax exemption statutes if it is primarily used for the exempted purpose, even though it may also be used for a secular or incidental purpose. McKenzie v. Johnson, 98 Ill.2d 87, 98 (1983).

The pivotal question to be determined in the instant case is what is the primary purpose of the property involved. Housing facilities are exempt from property taxes if: (1) they are “owned by churches or religious institutions or denominations;” and (2) they

are used as “housing facilities provided for ministers;” and (3) such ministers reside in the facility “as a condition of employment.” 35 ILCS 200/15-40.

It is undisputed that the subject property was purchased by First Open on October 15, 1999. The residence, located next door to the church, replaced a former parsonage and was purchased by First Open to provide a residence for the pastor and his wife. I conclude that the residence is owned by First Open and is a “housing facility provided for ministers” as required by the statute.

A parsonage qualifies for an exemption if it reasonably and substantially facilitates the aims of religious worship or religious instruction because the pastor’s duties require him to live in close proximity to the church. McKenzie v. Johnson, 98 Ill. 2d 87 (1983). Sunday school classes and Wednesday night youth activities are held in the residence on the subject property. Ms. Kurfiss testified at the evidentiary hearing that First Open provided the parsonage to the pastor and he was required to live there. I conclude therefore, that the activities occurring in the residence facilitate religious worship and instruction and that the pastor resides on the subject property as a “condition of his employment” as required by the exemption statute.

WHEREFORE, for the reasons stated above, it is recommended that the subject property be granted an exemption from property taxes for 21% of the 1999 tax year, which represents the period from October 15, 1999 to December 31, 1999.

ENTER:

Kenneth J. Galvin
Administrative Law Judge

May 17, 2002